



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00AT/HYI/2022/0003**

**Property** : **Flat 16 Grove House, 76 Sidmouth Avenue, Isleworth, Middlesex, TW7 4FQ**

**Applicant** : **Nicola Will  
Alessandro Koterba**

**Respondent** : **G&O Properties**

**Type of application** : **Regulation 11 of the Building Safety (Leaseholder Protections) (England) Regulations 2022**

**Tribunal member(s)** : **Judge S McGrath  
Judge A Sheftel**

**Date of decision** : **17<sup>th</sup> October 2022**

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**DECISION ON JURISDICTION**

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**The application**

1. By application dated 3 September 2022, the Applicants seek a determination that the landlord has not complied with the provision of information requirements in Regulation 11 of the Building Safety (Leaseholder Protections) (England) Regulations 2022 (the “Regulations”).
2. Grove House is a 5-storey purpose-built block of flats, constructed circa 2017. It is said that various remediation works are required as detailed in an EWS1, which was undertaken in May 2021.

3. The Applicants are the lessees of flat 16. The Respondent, freeholder, is G & O Properties and Group. According to the application, the developer, Eleanis, was dissolved in October 2021.
4. The Applicants seek an order that the freeholder provide a landlord's certificate in accordance with the provisions of the Building Safety Act 2022 (the "2022 Act") as further set out below, to show whether the freeholder is liable for remediation works pursuant to the provisions of the 2022 Act. Without this they cannot move the remediation works forward and cannot sell their flat. The Applicants requested the document on 27 July 2022, 23 August 2022 and 1 September 2022, but no landlord's certificate has been provided.
5. On 9 September 2022, the tribunal wrote to the parties listing the matter for a Case Management Hearing. The tribunal requested that the Respondent file a position statement dealing with the following issues:
  - (1) Whether the building which includes the subject flat is at least 11 metres high, or has at least 5 storeys (and, if so, whether it is a "relevant building" as defined by section 117 of the Act);
  - (2) Whether the lease is a qualifying lease and the parties are relevant landlords and relevant tenants within the meaning of the Act (sections 119 to 121); and
  - (3) Whether it is accepted that the respondent has failed to comply with regulations requiring the provision of prescribed information or documents to the applicants.
6. The Applicants were then given the opportunity to respond.
7. From the parties' responses, it appears to be accepted that Grove House is a 'relevant building', the lease is a qualifying lease and the parties are relevant tenants and a relevant landlord respectively. However, according to an email from the Respondent's managing agents dated 26 September 2022, the Respondent makes no admission as to whether it has failed to comply with regulations requiring the provision of prescribed information or relevant documents.
8. A Case Management Hearing took place on 17 October 2022 and was attended by the Applicants. The Respondent did not attend.

## **The issue on jurisdiction**

9. The tribunal's letter of 9 September 2022 also raised the concern that the tribunal might not have jurisdiction to hear the application. The basis for this is as follows:

(1) Paragraph 3 of Schedule 8 to the 2002 Act provides that no service charges are payable by a lessee in respect of remediation works relating to a relevant defect if the relevant landlord meets the contribution condition (i.e. a net worth of £2,000,000).

(2) Paragraph 14(1) of Schedule 8 to the 2002 Act raises a presumption that a landlord meets the contribution condition in paragraph 3 unless the landlord provides a certificate (the "Landlord's Certificate").

(3) The requirements for a landlord's certificate are set out in Regulation 6 of the Regulations and the form of Landlord's Certificate is at Schedule 1 to the Regulations. This must confirm, among other things, whether or not the landlord met the contribution condition and confirm whether or not the landlord (or associate) was responsible for a relevant defect.

(4) Paragraph 16 of the Schedule to the 2022 Act provides as follows:

"(1) The Secretary of State may by regulations make provision requiring a relevant landlord to give prescribed information or documents to a relevant tenant or other prescribed person

...

(5) The regulations may make provision for and in connection with an application to the First-tier Tribunal for an order :

(a) determining whether a relevant landlord has failed to comply with the regulations; and

(b) if so, requiring the relevant landlord to provide specified information or documents to a specified person by a specified time

"Specified" here means specified in the order."

(5) While paragraph 5 above envisages the type of application such as in the present case, the difficulty comes from the Regulations themselves. Regulation 11 provides as follows:

“(1) This regulation applies where a leaseholder or relevant landlord (the “applicant”) wishes to apply to the First-tier Tribunal for an order under paragraph 16(5) of Schedule 8 to the Act.

(2) The applicant can make an application under paragraph (1) above where-

(a) the applicant believes that a relevant landlord has made a false claim in the landlord’s certificate provided under regulation 6, including but not limited to—

(i) stating that the relevant landlord is not the developer of the relevant building or is not associated with the developer; or

(ii) stating the relevant landlord does not meet the contribution condition;

(b) the relevant landlord or current landlord has not given the leaseholder sufficient time to provide information to prove they have a qualifying lease.

(3) In this regulation, “relevant landlord” has the meaning given in paragraph 16(8) of Schedule 8 to the Act.”

10. Regulation 11(2)(a) allows for an application to the tribunal where it is contended that a landlord has made a false claim in the Landlord’s Certificate and Regulation 11(2)(b) applies where the leaseholder has not been given sufficient time to respond. However, it appears that there is no provision for leaseholders to seek an order from the tribunal requiring a freeholder to provide a Landlord’s Certificate.
11. This means that the Tribunal has no power to make the type of order contemplated under paragraph 16. In terms, there is no regulation which enables the Tribunal to make an order determining whether a relevant landlord has failed to comply with the requirement to provide a landlord’s certificate.
12. The Tribunal can only speculate that this omission was not intended. The Tribunal cannot act without an express power and paragraph 16 of schedule 8 to the Act does not itself confer power, instead it defers to the regulations. It is a matter for those responsible for policy and legislation to decide whether or not to confer the power in future regulations but for the time being, no such power exists.
13. It is unfortunate that the Tribunal is unable to make an order in this case as, at first sight, it seems that there is a reasonable case to show that the Respondent is in breach of its statutory duty under paragraph 16 to provide a certificate. The Tribunal advised the Applicants to take

independent legal advice about their position under the Building Safety Act generally.

### **Conclusion**

14. For the reasons set out above, it is determined that the tribunal has no jurisdiction to hear the application and accordingly it is struck out pursuant to rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Name:** Siobhan McGrath

**Date:** 17<sup>th</sup> October 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).